

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC,

Plaintiff,

V.

TEXAS INSTRUMENTS, INC.

Defendants.

BLUE SPIKE, LLC,

Plaintiff,

V.

YAHOO! INC.

Defendants.

Civil Action No. 6:12-CV-499-LED

(LEAD CASE)

JURY TRIAL DEMANDED

Civil Action No. 6:12-CV-556-LED

(CONSOLIDATED WITH 6:12-CV-499)

JURY TRIAL DEMANDED

**DECLARATION OF GABRIEL S. GROSS IN SUPPORT OF YAHOO!
INC.'S MOTION TO DISMISS BLUE SPIKE, LLC'S COMPLAINT FOR
INDIRECT AND WILLFUL PATENT INFRINGEMENT FOR FAILURE
TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED**

I, Gabriel S. Gross, declare and testify as follows:

1. I am a partner at Kasowitz, Benson, Torres & Friedman LLP, and counsel for defendant Yahoo!, Inc. (“Yahoo!”) in this action. Unless stated on information and belief, I make this declaration based on my own personal knowledge, and if called as a witness, I could and would competently testify to the matters set forth herein.

2. On or about December 4, 2012, Yahoo!, Inc.'s counsel David Brightman, Head of IP Litigation and Conflict Management, conferred by telephone with Blue Spike, LLC's counsel Randall Garteiser and Christopher Honea. Mr. Brightman raised certain deficiencies in Blue

Spike's pleading of indirect patent infringement and willfulness, and conferred with Blue Spike's counsel about Yahoo! potentially filing a motion to dismiss these claims.

3. On or about December 6, 2012, on Yahoo!'s behalf I telephoned and left a voice message for Messrs. Garteiser and Honea regarding the deficiencies in Blue Spike's indirect infringement and willfulness claims, and requested a return call to continue meeting and conferring about these deficiencies, about whether Blue Spike would consider amending its claims to avoid motion practice, and about Yahoo!'s potential motion to dismiss.

4. Also on or about December 6, 2012, after having not heard back from Messrs. Garteiser or Honea, I sent a follow-up email requesting a call between counsel to "continue meeting and conferring and to explore whether Blue Spike will consider amending its complaint, rather than having motion practice over it."

5. On or about December 6, 2012, I received an email from Mr. Garteiser stating, "Blue Spike opposes the motion and disagrees that it is required to amend its complaint at this time."

I declare under penalty of perjury of the law of the United States that the foregoing is true and correct.

Executed this 10th day of December, 2012, at Redwood Shores, California.

By /s/ Gabriel S. Gross
Gabriel S. Gross